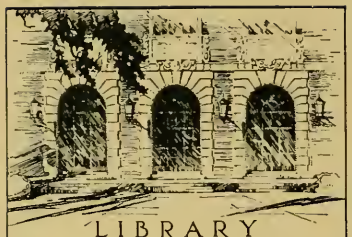

Hon: J. C. Talbot
with the Author's kind regard

LETTER

TO THE

RIGHT HON. THE SPEAKER

UPON THE

SYSTEM OF PROCEDURE

FOR THE

TRIAL OF CONTROVERTED ELECTIONS,

BY

FREDERIC CALVERT, ESQ. Q.C.

LONDON:
JAMES RIDGWAY, PICCADILLY.
1851.

LETTER.

9, St. James' Place, 15th May, 1851.

My dear Sir,

During the debate which took place in the year 1844 respecting the appointment of a Committee upon the trial of controverted elections, an Honourable Member remarked, that "he* did not know whom the Right Honourable Baronet (the late Sir Robert Peel) meant to put on his Committee, but he hoped amongst the number there would be some Honourable Gentlemen who had suffered by the present system—who felt where the shoe pinched, and who would be able to give the Committee some assistance in coming to a decision upon the merits and demerits of the present system." This, Sir, is not the only principle upon which I venture to address you on this occasion. During seven years I acted as a Revising Barrister, and for a considerable period I practised before Parliamentary Committees, sometimes in election cases, and very frequently in cases of other descriptions. I have thus been under the necessity of devoting a great deal of attention to the law and practice of Parliamentary Com-

* Mr. Gisborne.—Hansard, v. 73. p. 1535.

mittees. While the Aylesbury Committee was sitting, I attended all the proceedings. My previous experience gave me a thorough acquaintance with what I may venture to call the anatomy of the case. I was like a surgeon, who himself undergoes an operation. I knew, and felt too, when the knife was slanted in the wrong direction. I was aware of the consequences. I trust, Sir, that you will not regard me as stepping out of my vocation,—you will perhaps agree with me that I am only discharging a duty, if, having had those various opportunities of forming an opinion upon the present system of Election Committees and of appreciating its results, I venture to invite your attention to its defects, and to suggest such remedies as are calculated to remove them.

No one entertains higher respect than I do for the abilities of those distinguished men, under whose authority the present system has been matured. But no one of them has viewed it from all the different aspects, under which it has been presented to me. And if I satisfy you that great mistakes have been committed in the Aylesbury case; mistakes, which could never have occurred, if the remedies which I offer had been previously adopted, I know that this single case of practical grievance will act more persuasively in favour of an amelioration of the system than any argument or theory, however accurate and conclusive; and that the authority and influence of distinguished names will yield to the test of experience.

It is solely for this object that I shall refer to some portion of the Aylesbury case. I do not write for self-vindication. No one at all acquainted with the case has imputed to me the slightest participation in the practices disclosed before the Committee. The Committee's resolution entirely acquits me of the charge.

Still less have I the slightest intention to cast blame upon the Committee. Indeed I should be deeply distressed, if any Member of the Committee, who proceeded with a due sense of responsibility to the discharge of his laborious and painful duties, should suppose that I call in question his honour and integrity, either in the regulation of the proceedings, or in the final decision of the case. On the contrary, the high-mindedness of the members of the Committee, combined with that intelligence which men of the world possess, supply the very ground upon which I take my stand. These qualities are an admirable guarantee for the determination of questions of fact; but no guarantee, as I maintain, for a correct judgment upon questions of law. They supply the requisites for the best of jurymen; they do not complete the character of a judge. The Committees of your House discharge the functions of jury and judge too. For the former they work well, infinitely better than the Committees framed under any of the old Acts of Parliament. But for the latter, I have in the Aylesbury case ample materials for proving, that

they are far from competent; and that if the due administration of justice is to be effected, they must in some form or another receive professional assistance. And observe, that I make this use of the Aylesbury case, merely because I am minutely acquainted with all the particulars of it. I might fall back on many other cases of recent date, and shew abundant reasons for regretting that a sufficient amount of judicial ability was not brought to bear upon them.

It would be absurd to suppose that for a deficiency of this nature members of Committees are liable to any kind of censure. Consider the years of toil, of self-sacrifice, of self-control and patience, during which a good judicial mind is gradually matured: you will then be reasonably astonished, not that serious errors are committed, but rather that the unprofessional Members of your House reach the present degree of success in the exercise of judicial functions. But the more justly the Members are exempted from all blame, the more glaring is the light in which the defects of the system are brought into view, the demand for alteration in the system becomes the more imperious. Such is the subject, to which I respectfully and earnestly request your attention.

A short statement of the events of the election will clear the way before us. About the 20th of November, 1850, communications were first made to me with a view to my becoming a candidate. On the 29th

I undertook to come forward. On the 30th I went to Aylesbury, and in an interview with a number of friends I made the preliminary arrangements for the contest. I again went there on the 3rd of December, and commenced the canvass. There were then two candidates in the field besides myself; Serjeant Byles as Protectionist, and Mr. Houghton of opinions more liberal than my own. Mr. Houghton retired on the 5th. Serjeant Byles left Aylesbury on the 14th; his retirement was announced in Aylesbury on the 16th. From that day until the 21st a new Protectionist Candidate was daily threatened and expected. On the 21st an Address was published by Mr. Montague Gore; but he never appeared. Mr. Houghton came forward a second time on the 23rd. The Nomination took place on the 26th; the Poll and Election on the 27th. My friends felt so much uncertainty respecting the appearance of some new Candidate as successor to Serjeant Byles, and also as to the amount of support, which the Protectionists might give to Mr. Houghton, that practically the contest was in continual activity from the day of my first visit to Aylesbury until the day of Election.

The Petition presented against me contained in the usual terms charges of bribery and treating by myself and my agents. The proof of bribery was attempted upon two grounds. One was, that I had paid some bills alleged to be due from Mr. Quintin Dick in respect of a preceding Election. This

charge failed entirely. The other, that I had bribed publicans by ordering refreshment at their houses. This charge also failed. The orders for refreshment were, in every instance, orders for money's worth, *bonâ fide* wanted and supplied, and were not accompanied by any contract or understanding, that the publican should vote for me.

As the case advanced, it appeared to resolve itself in the minds of the Committee into a question of the position and conduct of a builder named William Ward. If I am wrong in this assumption, my excuse is that, according to the universal practice, the Committee gave no reasons for their decision, and that their own remarks led me, and, I believe, my opponents, to this view of the question at issue.* Some few days before the Election, a stranger came to Aylesbury, who adopted the name and title of "The Man in the Moon." When I mention him, I shall call him "the Stranger." He organized a system of refreshment for those voters who supported me, ordered the preparation for it at public-houses, and distributed tickets to the voters for whom it was provided. One of the persons who assisted him in carrying out this system was William Ward. Ward had also been employed on my behalf in selecting and providing payment and food to stavesmen and flagmen and messengers for the purposes of the Election. He had also

* See Questions 2128, 2727, 3463.

canvassed for me in my presence. My belief is, that the Committee thought that, according to the evidence, I was to be made responsible for the conduct of Ward. If I am mistaken in this belief, I can truly say, that I am unable to discover in the evidence any other matter, which bears even the semblance of any ground for their decision.

To render my quotations from the evidence intelligible, I must observe that Messrs. James and Rodwell were Counsel for the Petitioners; Messrs. Serjeant Kinglake, Merewether, and Phinn, were Counsel for me.

The first part of the evidence, to which I invite your attention, is at Question 91.*

Mr. Palethorpe, Clerk to Messrs. Benson and Philbrick, is under examination.

Mr. Merewether—91. "Did you hear Mr. Philbrick make any statement with reference to refreshments at the coming Election?"

Mr. James objected to the question, on the ground that it was irrelevant.

The witness was directed to withdraw.

Mr. Merewether was heard in support of the question.

Mr. James was heard in reply.

The Chairman stated that the Committee were of opinion that the Counsel had *a right* to put the

* The evidence is quoted from "the Minutes of Evidence taken before the Select Committee on the Aylesbury Election Petition, 1851." These Minutes were delivered to Members of your House on the 9th of May.

question, but that, *considering the admissions* which had been made, he might remind Mr. Merewether that *he was cross-examining* the witness, and that it was *scarcely fair upon cross-examining to establish distinct facts.*"

I must mention, that according to the opening speech of Mr. James, Mr. Philbrick was my agent, and had been party to treating at Missenden. Mr. Palethorpe had already stated, that Messrs. Philbrick and Benson were employed as my agents at the Election. Mr. Merewether put the question in cross-examination. Can it be supposed that such an objection would have been taken, if any man of competent professional knowledge had been present in the Committee? Yet the Committee, admitting *the right* to put the question, clogged their admission with a suggestion respecting *fairness*, which no man of judicial experience would ever have sanctioned. The only admission previously made that bore upon the matter was, that Mr. Benson, one of the employers of the witness, was one of my agents. Thus the Petitioners had chosen to call my agent's clerk as witness. If the cross-examining Counsel had been able to prove the entire case for the defence out of this witness's mouth, why should he not have done so? Observe this principle. The Petitioner's Counsel, by calling Mr. Palethorpe, had shewn confidence in him, as in a witness who would speak the truth. They had attached credit to all his statements, by whichever Counsel they were obtained. The Committee

seem to have been scarcely discriminating between the rules of cross-examination and those of re-examination. In the first place, they were simply to decide whether the question was legal; not whether it came within their notion of *fairness.* In the second, there would have been nothing unfair in extracting from this witness his entire knowledge of every transaction to which Mr. James had alluded in his opening speech. I need hardly ask you, whether a resolution, thus passed at the very threshold of the case, did not show that great injury was done to the defence by the want of judicial assistance.

I now pass to the consideration of a rule of evidence, which was violated in the examination of almost every one of the Petitioners' witnesses. I mean as to the necessity of proving agency, before any evidence is offered of treating. By virtue of 4th and 5th Vict. c. 57, evidence of bribery and evidence of agency may be received together. But this rule does not apply to treating. In that Act, as originally framed, there was a clause to this effect. It was struck out in the House of Lords. So far, then, as evidence of treating is received in respect of a person whose agency has not been previously established, the examination is illegally conducted. I have already adverted to a legal distinction as to orders of refreshment. If money's worth is obtained for the order, and the refreshments are *bonâ fide* wanted for the purpose of treat-

ing, the order is not colourable, nor does it come within the offence of bribery.

Let these rules be applied to the evidence of the the first publican examined, William Locke, (Question 101). He kept the Saracen's Head. A few days before the election, the Stranger came to his house, ordered refreshment for twenty persons on the nomination day, and paid £5. for the order. The parties for whom the refreshment was ordered were to bring tickets, marked J. C. Locke provided the refreshment, and, according to orders received, kept it ready until five o'clock on the afternoon of the nomination-day: but no one having a ticket came. Other people ate the food. The Stranger came again that evening and ordered provisions for the same number on the polling day. The provisions were prepared. Eighteen persons came: the Stranger subsequently called, and paid eighteen sums of 5*s*. each, £4. 10*s*. Locke voted for me, and like many other voters, went to the Bell Inn after he had voted, and obtained a ticket. He had the ticket for refreshment at his own inn.

Such was the substance of Locke's evidence. I have selected it, because it is, of all the cases of the publicans, the least favourable to my objection that the evidence was illegally received: first, because the bearers of the twenty tickets did not come on the nomination day; secondly, because the publican received a ticket for refreshment at his own house. But the absence of the bearers of tickets

on the nomination day was evidently accidental, the consequence of mere mismanagement. The provisions were supplied; the order was *bonâ fide* given and executed. And the Stranger prevented the repetition of the mistake by paying for the second set of dinners after the polling day. He then paid for eighteen dinners only, because only eighteen tickets were produced. Secondly, the fact that the publican was to receive the food himself rendered the transaction one of treating, but not of bribery. There was no corrupt contract in respect of the order of food. The corruption lay in the permission, which the publican received, himself to consume the food. The agency therefore of the Stranger ought to have been proved, before any of these facts of treating were established. No evidence of such agency was tendered then, or in any other part of the case. The evidence of treating was illegally admitted at the time, and did not receive even any colour of justification by any evidence of agency subsequently produced.

The same remarks are applicable to the examination of many other publicans—Wootton, Mr. and Mrs. Hinds, Turnham, Wicks, and Berry. They are applicable still more strongly in these instances, because the persons for whom the refreshment was ordered actually came and ate it; and there was no evidence that the publicans received tickets for their own houses. There was not the semblance of bribery; no pretence at all for the admission of the evidence.

The only important evidence of agency, which was proved by the Petitioners in their case, was given in respect of William Ward. In substance it amounted to this: that Ward selected, and paid, and provided food for the stavesmen, flagmen, and messengers, and paid for the food; also, that on a few occasions he canvassed for me in my presence. This is the whole of the evidence of agency which the Petitioners adduced; yet they were allowed by the Committee to pour in abundance of facts about suppers, dinners, refreshments, tickets, speeches, and conversations. My Counsel remonstrated in vain. At one time the Committee thought that the charge was more a charge of bribery than of treating;* yet, from the beginning to the close of the case, no bribery was established. At another time it was stated, without any reason being given, that "it was the *feeling* of the Committee that the Counsel should proceed in his examination."† At another the Committee "felt a difficulty in separating the evidence which related to treating from the evidence which might relate to bribery; and they felt it to be necessary, in a great measure, to defer to the discretion of Counsel."‡ This observation was made in respect of a supper at a public house; clearly a matter of treating without any symptom of bribery. May I ask you, Sir, whether the very terms, thus used by the Chairman of the Committee, do not irresistibly

* Qu. 232. † Qu. 926. ‡ Qu. 1438.

prove that some judicial authority should be present to control Counsel, as well as to direct proceedings ?

On the 31st March Mrs. Wheeler was examined. It was proposed to take evidence of William Ward's conversation. Serjeant Kinglake objected. Observe what the Chairman said: "The Chairman stated that the Committee was of opinion that the conversation of Mr. William Ward might be received in evidence, he being connected with a great many of these transactions, some of which *might be thought to have the character of bribery*, and therefore to come within the statute as to bribery."* I need scarcely observe that the expression in italics falls short of a decision that any of those transactions were bribery; and that until the Committee had made that decision, they could not legally admit against me evidence of Ward's conversations. And their ultimate resolution shews how completely they were in error; for, although they fastened upon me responsibility for all Ward's acts, they did not find me guilty of bribery. Nor was the evidence admissible upon the footing that Ward's agency was at that time established. For on the following day, the 1st of April, the Chairman stated, "that it would be more convenient, and would probably save expense to all parties, if the Counsel would do what they could to establish the agency of William Ward."† And it was not until a late hour on that

* Qu. 1602. † Qu. 2128.

following day, that the Counsel for the Petitioners closed the evidence of Ward's agency.

Again, evidence of agency was not in this case so much mixed up with evidence of treating, that, according to the resolution in the Cambridge case, both might be given together. The two classes of evidence were by their very nature easily separated. The business of stavesmen, and the canvassing from door to door, which formed the sole evidence of agency, given by the Petitioners, were quite distinct from suppers and speeches, and the distribution of tickets. I was entitled, before any of the facts of the latter class were proved, to obtain from the Committee their opinion, whether the facts proved of the former class had established the agency of Ward. That right was essential. It belonged to me on account of the very nature of the defence. It was vital to the whole case. Why was I deprived of it? Simply because the rules of evidence were not observed. Suppose they had been observed. The entire case must then have assumed a shape altogether different. All the facts respecting the stavesmen; viz., selection, payment for hire, orders for food, payment for food, and the facts relating to Ward's canvass must have been proved in the first instance. If upon this proof the Committee had not been satisfied that such an agency was established as would make me responsible for all Ward's acts, there would have been an end of the case. But after the Committee had allowed their minds

to be incumbered day after day with facts of treating irrespective of agency, I could not suppose that they would have the power of separating the two classes of facts. I therefore could not put the question to the Committee; and I was deprived of the defence which ought to have been the head and front of my case, that is, the inability of the Petitioners to establish the agency of Ward.

And here, again, I ask you to observe to how great a disadvantage I was exposed, simply because the Committee sanctioned these departures from the legal rules of evidence; in other words, because in the absence of judicial authority, I was deprived of my legal right. In truth, the case was improperly tried from the beginning to the end; and, had there been any opportunity of taking proceedings analogous to a motion for a new trial at law, a new trial must have been undoubtedly granted. But it is one peculiarity attending an Election Committee, that a mistake once made admits of no correction. This again is one reason, why a person of high legal authority ought to form a part of this tribunal. An action for a very trivial amount is tried before the greatest lawyer of the day. Still, if an error is committed, a new trial is had. The possession of a seat in Parliament is tried before a Court, in which the presence of a lawyer is merely accidental. If an error is committed, it admits of no correction. Surely it is high time to put an end to such an anomaly.

I allude to one other branch of the Petitioner's evidence, as it brings strongly into view a defect of a very serious nature in the proceedings of Election Committees. This defect is, that the sitting Member often is, and, if innocent of the charges brought against him, must be almost of necessity destitute of all previous information upon the matters which are to be alleged against him. The Petitioner may spend many weeks in preparation of his evidence. He may even remove persons who might be called to give evidence on behalf of the sitting Member. Still the sitting Member has no notice of the ground which is to be broken in the attack. In the Aylesbury Election the canvass commenced on the 3rd of December. The Election took place on the 27th of December. The electoral district is about twenty miles from north to south; fifteen miles from east to west. The Petitioner had the power of bringing forward any events which occurred between those two days, anywhere within that district. Of no one of the events mentioned by the Petitioner's counsel had I ever heard, until he opened the case. And yet as soon as he had concluded his opening, I was required to be ready for the cross-examination of any witness whom he thought proper to call. From day to day I lay under a like disadvantage. I never knew beforehand what particular facts were about to be brought forward. The different parts of the electoral district had been parcelled out to the charge of

the different agents. I never knew which was the agent, whose presence would be required on the ensuing day. Compare such a system as this with proceedings in an action, or a prosecution. Time, place, persons, all circumstances are distinctly pointed out long before the day of trial. Compare it with proceedings in a Court of Equity. The facts, and all particulars of the evidence, are all, with abundant time for inquiry and refutation, disclosed on the record. Without this previous notice, the contending parties can never meet upon equal terms. I do not enlarge upon this topic, because I do not believe that any one will deny the absolute necessity of altering the practice of the House of Commons in this particular.

The branch of the Petitioner's evidence in which this unfairness was the most apparent, related to treating at the George Inn at Missenden. A witness, named Marianne Filbee stated, that in December 1850 she was maid at that inn. She gave an account of a series of scenes of great intemperance, which, she said, occurred during the stay of Mr. Philbrick in that house, and apparently with his sanction. She was called on the 1st of April, and, as it was not known that any evidence concerning Missenden was to be brought forward on that day, Mr. Philbrick was not in attendance. Filbee stated that he was at the inn during the whole of the last week previous to the election. She could not be mistaken. She gave him his candle

when he went to bed, and made his bed in the morning. On a subsequent day Mr. Philbrick was called. He proved that he never slept at that inn during the last week previous to the election that the last night before the election on which he slept there was the 10th day of December, that altogether he slept there only two nights, and that to the extent of his knowledge no entertainment took place during his stay at the inn. Now if the rules of proceeding had required a previous notice of the matters to be brought forward on each successive day, Mr. Philbrick would have been in attendance when Filbee was under examination, would have supplied the information requisite for her cross-examination, and would have enabled my Counsel to extract from her own mouth the refutation of her evidence.

Some of the mischievous consequences which flowed from the illegal admission of evidence have already been mentioned. Further difficulty, arising from the same source, was felt upon the question, whether I should call witnesses. The evidence of Ward's agency was in reality not sufficient to constitute him a general agent. But it seemed to me, that after the Committee had been for several days listening to evidence, in truth foreign to the question of agency, yet apparently connected with it according to their views, there was considerable hazard in leaving the case before them without any evidence on my part. The difficulty arose simply

from a want of legal power in the tribunal. The great bulk of the Petitioner's evidence the Committee had admitted illegally: it was idle to calculate upon any thing like legal accuracy in the inferences at which, if no other evidence was produced, they might possibly arrive. On the other hand, I well knew that Ward would be shewn to be merely a special agent, and that a strict abstinence from all illegal expense would be at once established by those who were in reality my agents. I therefore took upon myself the responsibility of determining to call witnesses.

I must here observe, that the absence of judicial power in the tribunal is severely felt in deliberation upon the question, whether witnesses for the defence shall be called. One objection to calling them is, that the Petitioner's Counsel at once obtains a right of reply. It is an objection of small moment in the presence of a good judge: he will not be misled himself, nor will he allow a jury to be misled. But when a tribunal is weak, the reply of Counsel containing misstatements or exaggerations of facts, or one-sided suggestions of inference, or erroneous doctrines of law, will frequently lead to a wrong decision.

The witnesses called by me were three solicitors, who were my agents: Mr. Tindal, who had been proved to have directed Ward in the transactions relative to the stavesmen; Mr. Philbrick, who had been mentioned as privy to a system of treating at Missenden; and Mr. Watson, who had been proved to

have cautioned some publicans against the supply of refreshments under the expectation that I would pay for them.

On the subject of agency these gentlemen proved, that the persons who managed the Election were Mr. Tindal, who gave his services gratuitously, and performed all the ordinary functions of a Committee, and seven legal Agents in company with him: that Mr. Tindal had the general control; that no authority had been entrusted to any one for the order of refreshments; that Mr. Tindal and my other agents had neither connection with, nor knowledge of, the Stranger; and that to Ward authority had been delegated to select the stavesmen, to manage them and to arrange for their food and payment, but for no other purpose whatsoever. Mr. Tindal added, with respect to Ward's agency, that on one occasion he had gone out canvassing with me, sitting on the box of my carriage; and on another had met me at a neighbouring village;* that he had gone out on these two occasions for the purpose of pointing out those voters with whom he, Mr. Tindal, was unacquainted. You now have before you the material facts with

* Mr. Tindal told me afterwards, that in these two statements he had made an error, being taken by surprise in the cross-examination, when he was very anxious not to conceal anything. The occasions on which Ward thus joined Mr. Tindal in the canvass were during Mr. Clayton's canvass in 1847, not during mine in 1850. But this evidence must, in considering the judgment of the Committee, be of course treated as correct.

regard to agency, as they were finally left to the consideration of the Committee.

Agency in the law of Elections depends on very peculiar principles. A candidate is made liable for violations of law, which he did not authorize, which he even has positively forbidden. He is treated as one who has made a bargain through the intervention of an agent, when the agent has committed fraud in the course of the transaction. If he takes the bargain, he must make good the loss of the person, on whom the fraud has been practised. Thus, the Candidate has committed the management of the contest to certain persons. He wins it through their exertions. If, however, they have violated the law, he must together with the benefit of their exertions accept the responsibility for their illegal acts: "Sentit commodum, sentire debet et onus."

That this liability may arise, two ingredients are requisite. First, he must have given the authority. Secondly, the authority given must be a general, not a special, authority. No Candidate wins an election by the services of an agent employed simply for the selection and payment of stavesmen. What shall be considered proof of a general authority must be matter of careful consideration in each case. It often happens that the sitting Member leaves the question as to the general authority in the vague state in which the evidence of Petitioner's witnesses has placed it. Not having called the witnesses who

can give the true explanation, he runs his chance of the impression which the *primâ facie* case of his opponents has made upon the Committee. But when the sitting Member calls his real agents as witnesses, and explains the nature of the machinery by which the contest was in truth carried on, he rebuts the inferences which slight symptoms of agency may have suggested, shews by whose services the election was really won, and brings the authority of every person employed within its true dimensions.

The distinction between a general and special agent is familiar in every day life. A gentleman's steward is his agent for the general management of his estate; his shepherd only for the management of his sheep. His groom is an agent for the management of his horses, but not for ordering meat into his kitchen. His butler may be agent for ordering his wine, but not therefore for ordering the repair of his carriages, or new shoes for his horses. Every one will see that, if the distinctions between general and special agency and between different kinds of special agency are overlooked, duties and liabilities will be involved in inextricable confusion.

A candidate is bound to select trustworthy persons for the discharge of the duties of general agents at elections. But there are always particular acts, which a person in the position of a general agent is unable to perform. For the performance of these particular acts some one must be selected, who thus becomes a special agent. But it would be

at variance with common sense and justice, to saddle the candidate with any acts of such a special agent beyond the limits of his agency. In the Aylesbury contest, this distinction was carefully attended to. That no illegal orders might be issued with the semblance of authority, no one received any general authority at all, who had not a professional knowledge of the law touching bribery and treating. The common authority of a Committee was vested in Mr. Tindal. All the other persons who joined in managing the general affairs of the election were Solicitors. They all fulfilled their undertaking to abstain from treating and bribery.

Mr. Tindal, not being sufficiently well acquainted with the labouring classes at Aylesbury to make a proper selection of stavesmen, was obliged to obtain other assistance for this purpose. Ward as a builder had the requisite knowledge, and was employed for this one purpose, but for no other. It was right that for his acts in respect of that employment, but no farther, I should be made responsible.

The witnesses whom I called proved that Ward was not one of those persons, through whose management and superintendence the election was gained. The additional occasions on which Mr. Tindal, by an accidental mistake, alleged that he took part in the canvass, became immaterial, because a clear and satisfactory account was given of the persons who really conducted the contest, and Ward was not included in the number. His agency

was reduced to a mere special agency for a definite and limited object. A Judge's presence would have preserved me from the consequences, which occurred solely because a special agency was treated as if it had been a general agency. But a still greater error was committed.

The Committee were to determine, from the evidence before them, in what light the Stranger was to be viewed; whether in any respect as my agent. That he was my agent, there was not a particle of evidence. That he fed my voters proved nothing at all. The distribution of food may often be a cheap mode of defeating a successful opponent. My acknowledged agents positively denied all acquaintance with the Stranger or knowledge of his acts. In cross-examination they were asked hardly a question upon the subject. The Counsel for the Petitioners alleged, in his opening speech, that the treating began after the retirement of Serjeant Byles, and when the prospect of an election without opposition had lulled my friends into a false security. Was it likely that my friends would be guilty of such an absurdity? Was it not more likely that my opponents, having been defeated upon the canvass, would have recourse to this stratagem? That having failed in the use of fair means, they would thus resort to foul means? One of the witnesses, Mr. Thurnham the publican, represented that he had a conversation with the Stranger, at which no third party was present. Yet when the

Solicitor of the Petitioners came to take his evidence, he shewed a previous knowledge of all the particulars of the interview. Was it not a fair inference from this knowledge, that there was some connexion between the Stranger and my opponents? A due attention to this state of the evidence should have led the Committee, if they formed any opinion at all upon the agency of the Stranger, to treat him as agent to my opponents.

Now see the effect of these considerations upon Ward's position. He was agent to me with respect to the stavesmen, and to them only. He was agent to the Stranger in the distribution of the tickets. If the Stranger was agent to neither party, both these agencies of Ward were strictly legal; for an indifferent party has a right to give refreshment to the voters. If this view is taken of the Stranger's position, it follows that the Committee converted the legal act done by Ward as agent to the Stranger into an illegal act as done under my authority. The Committee made a twofold mistake; in the first place, of two constructions of Ward's acts they preferred the one, which imputed to him the commission of an offence; in the next, they made me responsible for a line of conduct, in which the entire evidence connected him with the Stranger.

Moreover, I have a right to suggest that in the case as proved there was no evidence that the Stranger was my agent; there was some, although not strong evidence, that he was the agent of my

opponents. On this view of the evidence I have been deprived of my seat, because a person specially appointed to be my agent on one subject only did an act wholly foreign from it, at the request and suggestion, and under the direction of one of the agents of my opponents.

I pass to another subject, which, I understand, had weight with the Committee, but which was treated by them in a manner which no Judge would have sanctioned. I allude to the amount of money which Mr. Tindal stated that he had received from me. The substance of Mr. Tindal's evidence upon this subject was as follows: That the sum of £1800 was paid, not at the commencement of the contest,* but from time to time as required; that I had said both to him originally, and to my agents and friends at their first meeting, "That I would consent to stand on no other terms than that there

* The short-hand writer's note does not contain the entire answer which Mr. Tindal gave on this subject. Mr. Tindal said that the money was placed in his hands from time to time as required. The words "as required" are omitted in the note. A member of the Committee desired Mr. Tindal to say what sum he had received from first to last. The Counsel followed up that desire by putting the question thus (3549): "Tell the Committee what is the sum that has actually gone into your hands on Mr. Calvert's behalf?" Mr. Tindal answered both questions, when he stated the sum of £1800. The Petitioner's Counsel in his reply spoke as if this sum had been deposited in the first instance, an idea, which Mr. Tindal had distinctly negatived. A Judge would have stopped the Counsel, and reminded him that he was not quoting the evidence correctly.

should be no bribery of any kind, nor treating of any description, that I had made that an indispensable condition to my standing," that Mr. Tindal retained the entire general control; that seven paid professional agents were appointed; that to each of them the care of a particular district was allotted; that no general authority was delegated to any one else; that I agreed on the 29th of November to become a candidate; that I went down on Sunday the 3rd of December to commence my canvass; that the district of Aylesbury is more like a small county than a borough town, about twenty miles from north to south, and fifteen miles from east to west; that there were many voters resident out of the Hundred, especially at Wycombe, that £900. had been already paid in agency, stavesmen, poll expenses, and carriage-hire, and that £500. or £600. would cover the remaining expenses, for which I was liable; that he and Mr. Watson and Mr. Philbrick had cautioned different publicans that I would not pay a farthing for any kind of refreshment. The Committee were aware that about two-thirds of the voters lived out of Aylesbury; that the constituency included all £10. householders within the district; that there is no polling place except at Aylesbury, and that from the 3rd of December until the 27th of December a continual canvass was carried on either in the presence or expectation of an opponent. There then was Mr. Tindal, avowing himself to be the agent, in whose hands were all the pecuniary

arrangements of the contest; making this general statement, and prepared to give any explanation that was required. From the commencement to the close of his examination, not a doubt was left as to any outlay, which was the subject of inquiry. How then ought the Committee to have dealt with this evidence? It seems to me, in one of two ways: either to have said that the evidence was quite satisfactory; or else, admitting that it was satisfactory as far as it went, to have said that it was necessary to go farther. But in this latter alternative they should have inquired into the other matters on which they were anxious to be informed. If they had done so, they would have received the most accurate information, even to every farthing of expense. For instance, as to the payment of the money to Mr. Tindal; before the election three several sums, each of £100; after the election £1500, in different instalments, according to the amount of the bills sent in; the last instalment paid on the 1st day of February. As to the application of the money, the Committee would have been informed of the distances from which the voters were carried to the poll, of the scarcity of horses in the district, of the consequent necessity to hire them from distant places, and of the number of constituents who, unlike £50 occupiers, have no horses of their own: again, of the confused state of the registry, of the consequent necessity to retain many professional agents, and of the admission of only professional agents into the general management of

the Election, for fear that other persons, acting as Committee-men and not aware of the extreme strictness of the law, should give any countenance to acts of treating. They would have been told that a canvass from house to house throughout that large rural district is customary, in order that the candidate and constituent may have personal communication and explanations, and that it was to be effected in this instance during short days, in wintry weather and over very bad roads. In short, if the Committee had signified the least wish for further information, Mr. Tindal was prepared to add to the general statement which he had made the most minute particulars concerning every sum paid and every order given. And I can entertain no doubt, that, had a Judge been assisting at the inquiry, he would have told the Members of the Committee that as no particulars had been required either by the Petitioners' Counsel in cross-examination, or by themselves, they were bound to treat the amount paid to Mr. Tindal as entirely free from suspicion. He would have told them that Mr. Tindal's evidence negatived the corrupt application of a single farthing, and that there was no evidence from which it could be inferred that any improper outlay had been made in respect of a contest, carried on as it was in a large district, during a very long period of time and under circumstances of great necessary expense.

I understand that another topic which pressed upon the Committee was the fact that Mr. Tindal

himself polled early and was absent from Aylesbury during all the remainder of the polling-day. Mr. Tindal said that he was *obliged* to go away (Qu. 3774), and that the professional agents superintended the polling after his departure. The Committee signified no wish to hear any thing more as to the obligation. That there was such an obligation, no doubt was raised. Would any Judge have permitted me to be prejudiced upon such a matter, unless some doubt was raised upon it by evidence? If the Committee had thought proper, they might have learnt farther, that the election had been expected on the 23rd of December, instead of the 26th and 27th; that Mr. Tindal had therefore postponed until the 27th business of very great importance, and that thinking the election quite safe, he did not consider it right to produce inconvenience by any further postponement.

I will allude to one more topic, which, I am informed, had influence with the Committee, namely, the number of the entertainments which took place. There were, in fact, the refreshment for the electors by the system of tickets on the days of nomination and polling, three or four entertainments in Aylesbury, and some at Missenden. But the number of them was immaterial. One traced to me was sufficient. However great the number of them, if no knowledge or sanction was established against me directly or constructively, if in my own person and by my agents, I not only gave no authority in such

transactions, but also positively forbade them, why was the occurrence of them to operate to my prejudice? The true inquiry before the Committee was, whether those acts were mine or not. Entertainments ever so numerous, accompanied with ever so strong an expression of party enthusiasm, might have been organized by my opponents, and, unless connected with me by some amount of sanction, ought to have been altogether disregarded.

I venture to hope, that the examination which I have made into the Aylesbury case has proved two things? one, that it was illegally tried; the other, that it was illegally decided.* I think it very important to show, that professional assistance is absolutely necessary, not merely in the final determination, but also throughout the management of the case; that, therefore, the power of sending a case to a Court of Law, would be a very defective remedy for the existing evils. I contend, not merely that a decision was made against me upon evidence which failed to connect me, even by constructive agency, with any corrupt practices; but, moreover, that, if the proceedings had been regulated according to correct legal rules, and the Committee

* You may, perhaps, recollect, that on the 28th of March I presented a petition respecting the mode in which the Committee was appointed. I had the opportunity of ascertaining the opinion upon that subject of seven Queen's Counsel, Members of the House of Commons. One of them doubted: the other six agreed with me that the *Committee was illegally appointed.*

had been aided by proper professional assistance, they would have discovered that the charges against me were merely frivolous; that I had taken every possible step for the prevention of corrupt practices, and had subjected myself to all the disadvantage of setting my face against such treating and entertainments as had taken place at some recent Elections. But I am sure that similar mistakes must continually be made, if judicial functions continue to be vested in those who have had no judicial education.

I now proceed to specify the remedies by which a due administration of justice may be hereafter secured. And first, as to the formation of the tribunal. Let me venture to assume, for the moment, that in some form or other good professional assistance must be given to the Committees; such assistance as may insure correctness in their practice and in their legal decisions. Committees are always open to one objection, namely, that they are composed of men engaged in political struggles, and that they are required to make decisions by which the numbers of the contending parties must be augmented or diminished. So long as there is an inquiry what are the political opinions of the majority of the Committee, so long you may be certain that the tribunal is regarded with distrust.

Another objection to which Committees are exposed is, that while the barristers who appear before them may be men of great legal ability, there is often no legal ability at all amongst the members of the

Committee. A tribunal is subject to one of the most serious of all possible defects, when there is more law amongst the Bar, than there is upon the Bench. It was recently said by a great authority in your House:—"If there were one thing more unfortunate than another, it would be if the Bar instead of looking up to the Bench should look down upon the Bench. If the Courts of Law ceased to hold that high position which they now hold, and if people were led to think that their judgments were given erroneously and with a want of capacity, such an opinion would shake the very foundation upon which rested the liberties and freedom of this country, and would inflict a wound upon our public interests which not the saving of a few thousands, nor any money-saving would counterbalance."* Allow me to ask whether these eloquent observations are not applicable to Courts of Parliament as well as to Courts of Law? Are there in those Courts no liberties to be protected? Is no freedom to be vindicated? Is it of slight moment that, through the infirmity of the tribunal, members illegally lose their constituencies; constituencies are illegally deprived of their members? View the event in either aspect, and you will see that a great constitutional wrong is effected.

In providing the Committees with some additional strength, all these considerations must be borne in mind. A new member is evidently wanted in

* Lord Palmerston.—Times, 6th May, 1851.

the tribunal, as capable of pronouncing the law, as the present members are of ascertaining the fact. It should be some one, who will import great weight and dignity, some one who is not looking out for promotion, who is as little as possible connected with party, who already fills a position, which commands public respect. He should be a distinguished lawyer; one who by unceasing practice keeps up his familiarity with the regular course of the profession, and is able to exercise over the Bar all requisite control.

I certainly think that the *dignus vindice nodus* has arisen, and that the legal members of these tribunals should be found among the fifteen judges. Assessors appointed by the House taken from ever so elevated a position at the Bar, must be open to one of two objections; either they would be made independent by receiving a permanent office, in which case they would gradually lose their professional power; or else they would continue in their profession, occupying some distinguished posts in the arduous career, and of necessity engaged in some political party.

I will not enlarge upon this recommendation. Matters of law which arise ought to be decided by the judge. He should at the conclusion of the case state the nature and bearing of the evidence to the Members of the Committee. Their authority should be conclusive in matters of fact. I am fully convinced that no one filling the office of a judge

would on an occasion of this nature make the slightest departure from the correct legal view of the case. To him politics would be nothing; law would be everything. The Committee of your House, thus discharging the functions of a jury, and supported by a correct knowledge of the law, would, if I am not entirely mistaken, receive and justify the largest amount of public confidence which, upon matters connected with politics, can possibly be attained.

My next recommendation is, that a system be introduced, analogous to pleading, but free from its technicalities, by which it may be ascertained beforehand, what are the matters in dispute between the Petitioners on the one hand, and the sitting Member on the other. That the Petitioner be required, within a definite period after the presentation of the petition, to state the facts on which he will rest his charges. The sitting Member should then be at liberty to state in answer, how he will meet the several charges; whether by admission or denial, in whole or in part. Of course it will require great consideration, how far such a pleading should be carried. But the record thus constituted should form the foundation of the proceedings in the Committee. The preliminaries of election-petitions are subject to objections of the most opposite character. Sometimes Petitioners have been for weeks collecting evidence upon matters with which the sitting Member is wholly unacquainted. Some-

times they come before the Committee with very imperfect knowledge of the circumstances on which they are to base their charges. They employ the time of the Committee in fishing for evidence, and use the Court as a sort of Court of discovery. Such a system of pleading as I recommend would remove both these classes of objections. It would prevent one party from bringing charges without sufficient foundation. It would inform the other beforehand of the precise questions to be tried.

In the next place, I propose to assimilate the rule of evidence, in respect of treating and agency, to the rules respecting bribery and agency. The admission of evidence upon different points simultaneously, before a weak tribunal, is prejudicial to truth. Before Members of the House of Commons, assisted by one of the fifteen Judges, it would promote the discovery of corrupt practices, and would produce no confusion, as the Judge would arrange the different parts of the evidence under their respective heads.

Lastly, I recommend an alteration in the law against treating. Committees have generally determined (whether in conformity with the statute is a question), that a candidate may pay any reasonable sum which is spent in bringing a voter to the poll. Still the law prohibits the offer of meat and drink on his arrival. And this law is advocated by many who wish poor men to vote. It often proves a great impediment to those who obey it. It supplies

reasons, why many excellent men may be unwilling to become candidates for seats in Parliament. I propose that the law be altered, and that it be made lawful to give to voters some reasonable quantity of refreshment, limited by tickets, or in any other more convenient mode. Consider the reasons for which restrictions upon certain acts are removed. First, That the act is not immoral. Is it immoral for a candidate to give reasonable refreshment to persons who have travelled great distances to vote in his favour? Secondly, that the restriction may be easily evaded. Thirdly, that it binds scrupulous, but not unscrupulous men. Fourthly, that public opinion is favourable to the commission of the act. I am convinced that so long as all refreshment is forbidden, public opinion will be favourable to a violation of the law. Fifthly, that the law produces immorality. If limited refreshment were allowed, public opinion would be favourable to the limit; at present it pardons too willingly any amount of indulgence. Sixthly, that the law produces litigation. Under the present law there will always be a *probabilis causa litigandi.* Refreshments will always be given by some one. The question to be tried will be always that of agency.

Of the several suggestions which I have offered the principal one is the introduction of a Judge into the tribunal. Some may perhaps be afraid that too large an inroad will be made into the time of the Judges. I very much doubt whether, if such a

plan as I have suggested were brought into use, any considerable number of hours would be spent in Election Committees. Revising Barristers and the Court of Common Pleas settle the law as to the franchise. Alteration in the law of treating will reduce to a small number petitions upon treating. The system of pleading will ascertain the true points in dispute. Awards of costs on due judicial principles will discourage experiments in attack or defence. And many matters now advanced most boldly, and argued at length, will be strangled in their very birth, merely because a judge has been added to the tribunal.

Allow me, in conclusion, to request your aid and influence in the immediate improvement of the Parliamentary tribunal. Reports are no doubt brought before you of all the Election-cases which are tried. Turn them over in your mind, and consider whether the correctness of the decisions made and of the mode of conducting the trials has not repeatedly been called in question; whether, in many instances, the same points have not been differently decided before different Committees. If my observations upon the proceedings in the Aylesbury case are applicable in a greater or less degree to the trials of other cases, I trust that no time will be lost in applying the proper remedies. The signs of the times foretell a general election at no distant date. All our public interests, moral political and religious, render it matter of grave importance that,

when that event shall occur, candidates of the purest motives and most honourable characters may enter the arena of the hustings. You will gracefully terminate the public services which you are rendering to your country during this Parliament, if you lend your aid in improving the access to the Parliament about to be elected. We may venture to think that time still remains amply sufficient for the accomplishment of the task. Place upon a more reasonable footing the laws which regulate the entertainment of electors; enable each party to enter the Election Committee with the same accurate knowledge of the matters to be tried; and introduce into the tribunal a great legal functionary, who will insure to every suitor that right which is inherent in us all, the right to have the suit determined in conformity with the rules of law: you will thus establish a claim, which will not be often surpassed, to the gratitude of future Parliaments.

I am, my dear Sir,

With much respect,

Your obedient and faithful servant,

FREDERIC CALVERT.

To the Right Honourable
THE SPEAKER.